

**AGREEMENT FOR URBAN GARDEN
BETWEEN CITY OF LINCOLN AND COMMUNITY CROPS**

1. **Introduction.** This Agreement is between the City of Lincoln, Nebraska on behalf of Lincoln Parks & Recreation Department (“City”) and Community CROPS (“Operator”) for services as outlined below.
2. **Services.** Operator and City enter this Agreement for Operator to enter upon, improve, and maintain an urban garden (“Garden”) located at the west end of Peter Pan Park, which is found as shown on Exhibit A between 30th and 32nd Streets on the west and east and between Apple and W Streets on the north and south (the “Premises”). The parties previously entered into a one (1) year agreement to operate an urban garden at this location authorized by Executive Order No. 86871 on February 6, 2014
3. **Term.** The term of this Agreement shall commence on January 1, 2015 and shall continue for four (4) years until December 31, 2018 unless terminated prior to that date as provided herein.
4. **Compensation.** There should be no compensation under this Agreement, but the Agreement is supported by adequate consideration per the other terms and conditions agreed to by the parties.
5. **Duties of Operator.** Operator shall be responsible for all operations of the Garden for the term of the Agreement. Operator shall perform the following duties:
 - A. Act as the primary contact for the Garden for questions by members of the community.
 - B. Provide City with the name and contact information of the appointed Garden Site Coordinator, who should be reasonably available should City need to contact Operator regarding Garden issues.
 - C. Provide City with the bylaws of its duly formed organization.
 - D. Submit a revised site plan for final review by the Lincoln Parks and Recreation Department prior to commencing the Garden.
 - E. Establish rules and regulations, including but not limited to issues of fee collection, maintenance work days, issuance of keys, disposal of wastes, unattended gardening plots, resolution of gardening disputes, management of waiting list, and payment of water bills and other obligations, for the Garden and communicate those in writing to the Parks and Recreation Director.
 - F. Operator has contributed \$8,700 toward the cost of a new water well that was installed by the Parks and Recreation Department in April 2014.
 - G. Submit proposals for table height gardens, lockable tool storage, fences, seating and site signage to the Director of Parks and Recreation for approval in advance of installation.
 - H. Allow access and operate the Garden only from dawn to dusk, seven days a week.
 - I. Obtain and keep signed waiver forms (see approved form attached) from every user of the Garden and provide copies of the signed forms to the Parks and Recreation Director as requested.

- J. Practice organic gardening for growing foods; no chemical herbicides, pesticides, fungicides or synthetic fertilizers are permitted on the site.
- K. Remove their garbage from the site.
- L. Ensure water conservation efforts are followed and not permit unattended watering.
- M. Clearly mark individual plot corners with stakes.
- N. Provide regular plot maintenance, with gardeners controlling weeds and removing diseased or pest-infested plants. No noxious weeds or invasive plants are allowed.
- O. Clean all gardening plots by November 1, with stakes and cages removed so the plots are neat and tidy.
- P. Submit and maintain a bond in the amount of \$1,000 as surety for cleanup of the Garden to Lincoln Parks and Recreation.
- Q. Provide a report, prior to the end of the calendar year, that shall include but not be limited to: Number of individuals participating, types of produce grown, number of plots used, estimated hours of community gardening donated, estimated pounds of produce donated, educational activities supported by the garden and number and type of participants, any issues that arose during the season and how they are proposed to be addressed, additional outcomes or information that may be helpful to the organization or to City.

6. **Duties of City.** City shall perform the following duties:

- A. Permit the Operator to use the Premises at no additional cost or expense from dawn until dusk during park operating hours.
- B. Contact Digger's Hotline to check that the site is free of conflicts with underground utilities prior to commencement of the Garden.
- C. Provide initial tilling and application of LinGrow compost and install metal stakes as permanent boundary markers for the garden.
- D. Install a park sign identifying the urban garden, park hours and organization.
- E. Act as a point of contact for questions regarding policies, rules and regulations, and standards relating to the Garden.
- F. City shall be under no obligation to make improvements to the Premises or provide any maintenance, support, or assistance in the operation of the Garden.
- G. City shall have no duty or responsibility to protect, secure, or defend the Garden or Premises from acts of vandalism, or any other damage or injury, other than those police protections provided to other property in the City of Lincoln.

7. **Entry and Inspection.** Operator hereby further covenants and agrees with City that City shall be permitted to enter upon the Premises at all reasonable times to examine the condition of the same.

8. **Condition of the Property.** By taking possession of the Premises, Operator accepts the Premises in its then current "as is" condition and acknowledges that the Premises is in good and satisfactory condition at the time Operator takes possession of the Premises. City is not responsible to make any improvements to the Premises. Operator shall, at all times, keep the Premises in clean, sanitary and safe condition and in compliance with all codes and regulations and all health, safety and police regulations in force. Operator shall cause all papers, rubbish, empty containers, garbage and other trash accumulated to be picked up and placed in suitable trash and garbage containers, which containers shall be kept in a clean and sanitary condition.

Operator shall be responsible for all landscaping, irrigation, mowing, and other upkeep of the grounds of the entire Premises.

9. **Expenses.**

A. **Maintenance and Repair.** Operator shall pay all expenses of every kind and nature whatsoever attributable to the Garden and Premises including, but not limited to all repairs to and maintenance of the Garden, Premises, and any improvements placed thereon. City shall not be responsible for any maintenance, repairs, or other costs during the term of the Agreement. All costs for the Garden and the Premises shall be borne by Operator.

B. **Utilities.** Operator shall pay all utility charges, including electricity, garbage removal, water, and other services supplied to the Premises which are separately metered or billed, including any connection charges associated therewith.

10. **Surrender and Restoration Upon Termination or Expiration.** It is agreed that at the expiration or termination of the time mentioned in this Agreement peaceful exclusive possession of the Premises shall be given to the City, unless a new agreement is developed to continue operation of the Garden. Operator shall, within thirty (30) days after termination or expiration of this Agreement, and at Operator's sole expense, remove debris as well as any improvements from or within the grounds of the Premises, unless otherwise agreed to between the parties in writing. The Premises shall be restored to their original condition prior to the Agreement.

11. **Compliance with Laws and Regulations.** Operator shall, at its expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directions, codes, rules and regulations of all governmental authorities having or claiming jurisdiction, directly or indirectly, over the Premises, including, but not limited to zoning, parking, the federal Occupation Safety and Health Act, the Americans with Disability Act, City and federal flood regulations, or other federal, state and local requirements pertaining to Operator's use of the Premises and the Garden, whether the same are in force at the commencement of this Agreement or may in the future be passed, enacted or directed. Operator shall also procure each and every permit, license, variance, approval, certificate, or other authorization required in connection with the lawful and proper use of the Premises, the Garden, and any improvements or appurtenance or any part thereof, as now or hereafter constituted. Operator shall give assistance to City in seeing that users of the Garden do so in compliance with the laws, ordinances, rules and regulations of the City and the State of Nebraska now and hereafter in effect during the term of this Agreement.

12. **Americans with Disabilities Act (ADA).** The parties shall comply with the Americans with Disabilities Act. Operator shall take all reasonable steps to provide services for individuals with disabilities as required by the Act. Operator shall defend, indemnify, protect and hold harmless City and all the officers, employees, and agents of City against any and all claims, demands, losses, actions or causes of action of whatsoever kind, arising or resulting from the Operator's failure to comply with and fulfill the requirements of the ADA.

13. **Signs.** Operator may erect such signs as needed to identify and advertise the Garden in or on the Premises. Operator shall not display or erect any lettering, sign, advertisement, or similar device on the Premises without the prior written consent of the Parks and Recreation Director, with the exception of plant labels. Operator shall likewise obtain written consent prior to erecting

fences and seating. Operator shall, at Operator's expense, remove all signs within ten (10) days of the termination of this Agreement. City shall not place any signs on the Premises without the prior consent of Operator, which consent shall not unreasonably be withheld.

14. **Improvements.** Upon the expiration of this Agreement or its termination as herein provided, Operator agrees that all structures and other improvements installed or built by Operator shall remain the property of the Operator and either sold or removed by the Operator. The design and materials of any permanent structure must be approved by the Lincoln Parks & Recreation Department and Mayor.

15. **Termination.** Either party has the right to terminate this Agreement if the other party fails to perform as required in this Agreement. Termination for breach may be exercised only after the non-breaching party notifies the breaching party of the failure to perform in writing twenty (20) days in advance of the effective date of termination. However, if the Garden is left unattended during the growing season for more than four (4) weeks, City will consider the Garden abandoned. Notices will be sent by mail or email to the point of contact and the Garden Site Coordinator. If no response is received or no action is taken within two (2) weeks of sending notice, City has the option to decommission the Premises as a Garden, charge the cost of doing so, and to reprogram the site to another use. City may also terminate this Agreement for any reason for its own convenience after giving written notice ninety (90) days in advance of the effective date of termination. If the Garden is determined to be an immediate nuisance or hazard to the health, safety, and welfare or Operator fails to comply with all applicable statutes, ordinances, rules, and regulations, City may terminate this Agreement effective immediately.

16. **No Joint Venture.** Operator has sole and exclusive charge and control of the operation of the Garden. Nothing in this Agreement shall be interpreted as creating a partnership, joint venture or relationship of principal and agent between the parties. The parties agree that each of them is acting on its own behalf and not as an employee, joint venture or partner of the other. It is expressly understood that neither Operator nor any of its staff are employees of City and, thus they are not entitled to any City benefits including, but not limited to, overtime, retirement benefits, workers' compensation, sick leave, or injury leave. Neither party shall be deemed an agent nor representative of the other, and neither party has permission or authority to bind or commit the other party to any agreements or other obligations.

17. **Insurance.**

A. Operator shall maintain General Liability Insurance at its own expense during the life of this Agreement, naming and protecting Operator and City of Lincoln, its officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Operator and Operator's agents. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

1. All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate;
2. Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate;
3. Personal Injury Damage - \$1,000,000 each Occurrence;
4. Contractual Liability - \$1,000,000 each Occurrence;

- 5. Products Liability and Completed Operations - \$1,000,000 each Occurrence;
- 6. Medical Expenses (any one person) - \$10,000;
- 7. Fire Damage (any one fire) - \$100,000.
- B. A Certificate of Insurance for its General Liability Insurance shall be provided and attached to this Agreement by Operator. The City of Lincoln shall be specifically named as an additional insured on the General Liability Insurance.
- C. Operator is required to provide City with thirty (30) days notice of cancellation, non-renewal or any material reduction of insurance as required by this Agreement.
- D. All commercial general liability and other property policies maintained by Operator shall be written as primary policies, not contributing with and not supplemental to the coverage that City may have.

18. **Indemnification.** To the fullest extent permitted by law, Operator shall indemnify, defend and hold harmless City, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of Operator, or anyone for whose acts any of them may be liable. This section will not require Operator to indemnify or hold harmless City for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of City. City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. Operator and its agents, members, and gardeners shall have no recourse against either City or its officers or agents, either for any loss or damage occasioned by Operator being required to vacate all or part of the space which Operator has been granted permission to use. This section survives any termination of this Agreement.

19. **Audit.** Operator shall be subject to audit per Lincoln Municipal Code Chapter 4.66 and shall make available to a contract auditor copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

20. **Fair Employment and Labor Standards.** Operator shall not discriminate against any employee (or applicant for employment), if any, with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, and Neb. Rev. Stat. § 48-1122, as amended. Operator shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.

21. **Integration, Amendment, Assignment, Severability, Waiver.** This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party. Each section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement and invalidity of any section of this Agreement shall not invalidate any other section thereof. The failure of

either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

22. **E-Verify.** In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, Operator agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees, if any, performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Operator shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C. § 1324b. Operator shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

23. **Capacity.** The undersigned person representing Operator does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind Operator to this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

IN WITNESS WHEREOF, Operator and City do hereby execute this Agreement.

Operator Signature: _____

Print Name and Address: _____

Mayor Signature: _____

Date of Execution: _____

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IN WITNESS WHEREOF, Operator and City do hereby execute this Agreement.

Operator Signature:

Ugrid Kirst

Print Name and Address:

Ugrid Kirst, Executive Director
Community Crops
1551 S. 2nd St
Lincoln NE 68502

Mayor Signature:

Date of Execution:

WARNING OF RISK, WAIVER, AND RELEASE

The undersigned hereby acknowledge the existence of and assume full responsibility for any risks associated with this urban garden or associated activities, which may cause damage to property or personal bodily injury or death to the participant. The participant is required to follow instructions, rules, and any safety guidelines closely.

The undersigned fully aware and understand the specific risks associated with this activity, including physical injury, and that this activity may be hazardous to the participant. The undersigned agrees to assume and accept the full risks associated with this activity without limitation, or in the alternative waive all rights to notice of risks associated with this activity and any activities connected or associated with this activity, including any loss or damage to clothing and/or personal equipment; any mental and/or physical injuries, including illness, permanent and/or partial disability; severe social and/or economic loss; attorney's fees; and/or any other damages or loss which may result not only from his or her actions, inactions or negligence, but the actions, inactions or negligence of others, or in the condition of the premises or of any equipment used. The undersigned agree to waive and relinquish all claims the undersigned and/or the participant may have as a result of participating in this activity against the City of Lincoln and their officials, officers, agents, volunteers and employees. The undersigned further assume all the foregoing risks and accepts personal responsibility for all costs associated with the risks or injuries that the undersigned incurred or causes.

To the fullest extent permitted by law, the undersigned, on behalf of myself as the participant or as the parent or guardian of a participant on behalf of myself and the participant, shall indemnify, covenant not to sue, defend, releases, and hold forever harmless City of Lincoln or their officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from this activity, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission associated with this activity.

The undersigned hereby acknowledge and represent unqualified authority to execute the same on his or her own behalf and/or on behalf of the participant and agree to hold harmless and indemnify the City of Lincoln from and against any claims of such minor or his or her successors.

The undersigned have read, fully understand, and freely agree to this Warning of Risk, Waiver and Release.

Participant Signature _____ Date _____

Printed Name _____ D/O/B _____

If a parent or guardian is signing on behalf of a participant (under the age of 19):

Signature _____ Date _____

Printed Name _____ Relationship _____

Emergency Contact _____ Phone _____

Physician _____ Phone _____



AMCO INSURANCE COMPANY
1100 LOCUST ST DEPT 1100
DES MOINES, IA 50391-2000

00884
RENEWAL

COMMERCIAL GENERAL LIABILITY DECLARATIONS

Policy Number: **ACP GLAO 7253873039**

Named Insured: **COMMUNITY CROPS**

Address: **1551 S 2ND ST
LINCOLN NE 68502-1908**

Agent: **INSPRO INC-LINCOLN 26-00884-000**
Address: **LINCOLN NE 68506**

Policy Period: From **03/15/14** to **03/15/15** 12:01 A.M. standard time at the address of the named insured as stated herein.

In return for the payment of the premium, and subject to all the terms of this policy, we agree with you to provide the insurance as stated in this policy.

LIMITS OF INSURANCE

GENERAL AGGREGATE LIMIT (other than products-completed operations)	\$	2,000,000
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	\$	2,000,000
PERSONAL AND ADVERTISING INJURY LIMIT	\$	1,000,000
EACH OCCURRENCE LIMIT	\$	1,000,000
DAMAGE TO PREMISES RENTED TO YOU LIMIT (any one premises)	\$	100,000
MEDICAL EXPENSE LIMIT (any one person)	\$	5,000

Retroactive Date (CG0002 only)

The Named Insured is: **NON-PROFIT ORG**
Business of the Named Insured is: **FRUIT & VEGETABLE DEALER**
Audit Period: **ANNUAL**

ENDORSEMENTS ATTACHED TO THIS POLICY

SEE COMMERCIAL GENERAL LIABILITY FORMS AND ENDORSEMENTS SCHEDULE

TOTAL ADVANCE PREMIUM \$ 500.00M

Replacement or
Renewal Number **ACP GLAO 7243873039**
A PACKAGE MODIFICATION FACTOR HAS BEEN APPLIED

Countersigned By _____
Authorized Representative

GL-D (10-98)

DIRECT BILL LU6T 14044

INSURED COPY

ACP GLAO 7253873039 809826361 72 0016881

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – STATE OR GOVERNMENTAL
AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION –
PERMITS OR AUTHORIZATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:

**CITY OF LINCOLN PARKS AND RECREATION
ATTN: MARY JOHNSON / 2740 A STREET
LINCOLN, NE 685023113**

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

However:

- a. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

2. This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

- B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All terms and conditions apply unless modified by this endorsement.